

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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In the Matter of

MOBILEMEDIA CORPORATION, *et al.*

Applicant for Authorizations and  
Licensee of Certain Stations in  
Various Services

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WT Docket No. 97-115

To: The Commission

**COMMENTS OF FALCON HOLDING GROUP, L.P.  
IN SUPPORT OF EMERGENCY PETITION  
FOR LIMITED RECONSIDERATION OR CLARIFICATION**

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Falcon Holding Group, L.P. ("Falcon"), by its attorneys, herein comments in support of the Petition for Limited Reconsideration or Clarification ("Petition") filed by Western Wireless Corporation ("Western") on July 3, 1997.<sup>1</sup> The Petition seeks limited relief from the Commission's June 6 Order, released June 6, 1997, in which, among other things, stayed the Hearing Designation Order in the captioned proceeding.<sup>2</sup> For the reasons stated herein,

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<sup>1</sup>As is the case with Western, Falcon is not a party to the captioned proceeding. However, also somewhat similar to Western, the fact that a party (Hellman & Friedman) to the proceeding holds a noncontrolling limited partnership interest in Falcon and Mr. John L. Bunce, Jr. holds one of 11 positions on Falcon's Board of Representatives may result in Falcon's radio applications being subjected to the broad application processing freeze contained in Paragraph 18 of MobileMedia Corporation, Order, 1997 FCC LEXIS 3025 (rel. June 6, 1997) (the "June 6 Order"). As such, Falcon is significantly affected by any action taken in this proceeding and its comments should be considered by the Commission.

<sup>2</sup>MobileMedia Corporation, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124 (rel. April 8, 1997) ("Hearing Designation Order"). Falcon fully supports the stay of the Hearing Designation Order, and is supporting reconsideration solely of Paragraph 18 of the June 6 Order.

Falcon supports the relief sought by Western in its Petition and makes additional suggestions.<sup>3</sup>

**I. PARAGRAPH 18 OF THE COMMISSION'S ORDER IS OVERBROAD AND MUST BE CLARIFIED OR REVISED.**

In Paragraph 18 of the June 6 Order, the Commission instructed:

Commission staff in all Bureaus and Offices that any radio applications in which these former or current officers, directors or senior managers have attributable interests shall not be granted without resolution of this issue as it pertains to that individual, either in the context of this hearing, if Second Thursday relief is ultimately not granted, or in the context of another specific application . . . . In addition, to the extent a Bureau or Office recommends that any application in which such an individual holds an attributable interest should be granted, it shall refer the matter to the Commission for disposition.<sup>4</sup>

This language appears to freeze the processing of any radio applications filed by any entity in which any former or current officers, directors or senior managers have an attributable interest. On June 25, 1997, the Chief, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau (the "Bureau"), pursuant to paragraph 18 of the June 6 Order, issued a revised and corrected list of former and current officers, directors and senior managers of MobileMedia and its subsidiaries (the "June 25 List").<sup>5</sup>

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<sup>3</sup>On July 7, 1997, Triad Cellular Corporation ("Triad") also filed a Petition for Partial Reconsideration of the June 6 Order, seeking similar relief to that sought by Western. Accordingly, Falcon also supports the relief sought by Triad.

<sup>4</sup>June 6 Order at ¶ 18.

<sup>5</sup>See Letter dated June 27, 1997 from Howard C. Davenport, Chief, Enforcement and Consumer Information Division, Wireless Telecommunications Bureau to Nathaniel F. Emmons, Esq.

It does not appear that any of the individuals contained on the June 25 List directly hold an attributable interest in Falcon or any entities controlled thereby. However, Falcon understands that Messrs. F. Warren Hellman, Tully M. Friedman, Mitchell R. Cohen and John L. Bunce, Jr. are (or were) affiliated with Hellman & Friedman Capital Partners and/or Hellman & Friedman Capital Partners II, L.P. (collectively, "Hellman & Friedman"). Hellman & Friedman Capital Partners holds an approximate 9.52 percent limited partnership interest in Falcon, and Hellman & Friedman Capital Partners II, L.P. holds an approximate 26.83 percent limited partnership interest in Falcon.<sup>6</sup> In addition, Mr. Bunce is a member of Falcon's 11-member Board of Representatives.<sup>7</sup>

Falcon is a general partner in numerous partnerships which own and operate cable television systems, and which hold FCC licenses in connection with such cable television operations. Such cable television operating entities include Falcon Cable Media; Falcon Community Cable, L.P.; Falcon Cablevision; Falcon Cable Systems Company II, L.P.; and Falcon Telecable.<sup>8</sup> Falcon also holds 100 percent of the stock of Falcon First, Inc. Falcon is also the general partner of (i) Falcon Classic Cable Investors, L.P. ("Classic Investors"), which is the general partner of Falcon Classic Cable Income Properties, L.P., and (ii) Falcon

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<sup>6</sup>As noted by Western, approximately 30 percent of MobileMedia's Class A common stock and 99 percent of its Class B common stock (together constituting approximately 52 percent of the voting interest) is held by Hellman & Friedman Capital Partners II, L.P. and certain affiliates (namely H&F Orchard Partners, L.P. and H&F International Partners, L.P.) and H&F MobileMedia Partners. See Petition at 5.

<sup>7</sup>Hellman & Friedman has the right to appoint a total of three members to Falcon's 11-member Board of Representatives. Mr. Bunce, however, is the only such member appearing on the June 25 List.

<sup>8</sup>Falcon Telecable indirectly holds an 11 percent partnership interest in Falcon Capital Cable. Falcon does not control the operations or management of Falcon Capital Cable.

Video Communications Investors, L.P. ("Video Investors"), which is the general partner of Falcon Video Communications, L.P. Hellman & Friedman Capital Partners II, L.P. separately holds an approximate 16.26 percent limited partnership interest in both Classic Investors and Video Investors.

The Commission's June 6 Order does not define the term "attributable" for purposes of this proceeding. It is therefore unclear whether Hellman & Friedman's noncontrolling limited partnership interests in Falcon or the presence of Mr. Bunce on Falcon's 11-member Board of Representatives results in Hellman & Friedman or Mr. Bunce holding an "attributable" interest in Falcon for purposes of sweeping Falcon within the scope of the application processing freeze indicated in Paragraph 18. Falcon would welcome a prompt ruling from the Commission that Hellman & Friedman and Mr. Bunce do not hold an attributable interest in Falcon within the meaning of Paragraph 18. However, if either Hellman & Friedman or Mr. Bunce are deemed to have an "attributable" interest in Falcon for present purposes, the inconsequential role of Hellman & Friedman and Mr. Bunce in Falcon's licensed operations and the nature of Falcon's licenses nonetheless makes the imposition of the application processing freeze on Falcon's applications an unintended and unfair result. In such event, the Commission should promptly reconsider the June 6 Order and narrow the scope of Paragraph 18 so as to be inapplicable to Falcon.

As limited partners, the Hellman & Friedman investment partnerships are not involved in the operation or management, and do not control, any Falcon cable system or any FCC license held by any Falcon entity. Mr. Bunce is not involved in the day-to-day operations of Falcon or any of its operating entities which hold FCC licenses, nor is he

involved in supervising the preparation or filing of any Falcon licensee's applications or reports to the Commission. Similarly, Mr. Bunce's position as a single member of Falcon's 11-member Board of Representatives does not empower Mr. Bunce to control the operations or management of any Falcon entity. Nor does Mr. Bunce hold a position as an officer, director, senior manager or their equivalent in any of Falcon's operating entities that hold all of Falcon's Commission licenses. It is also important to note that there is no allegation pending that Hellman & Friedman or Mr. Bunce have ever done anything concerning Falcon that is improper or that could in any way affect Falcon's qualifications to be a licensee. Moreover, as the Commission knows, the MobileMedia wrongdoing has been the subject of internal investigations by MobileMedia itself, by outside counsel retained by MobileMedia for that purpose and by the Bureau who has already conducted extensive depositions, including that of Mr. Bunce. As best as Falcon is aware, there has not been even a scintilla of an allegation that any Hellman & Friedman principals were even aware of the wrongdoing which was voluntarily disclosed to the Commission in September/October, 1996 by MobileMedia.

The unnecessary and unfair nature of imposing the application processing freeze on Falcon is highlighted by the type of applications filed and licenses held by Falcon. The radio licenses held by Falcon operating entities are primarily Cable Antenna Relay Service ("CARS") or Business Radio Service authorizations.<sup>9</sup> This means that they are

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<sup>9</sup>Falcon entities also hold registrations for numerous TV Receive-Only earth stations ("TVROs"), but such registrations for passive, receive-only satellite antennas would not appear to constitute "radio applications" within the meaning of paragraph 18 of the June 6, 1997 Order. See First Report and Order, CC Docket No. 86-496, 6 FCC Rcd 2806 (1991).

(continued...)

authorizations for private, non-commercial facilities used for internal business communications or the distribution of video/audio signals within Falcon's cable television operations. They are not commercial radio licenses subject to competitive bidding procedures and have little, if any, stand-alone market value. Even if the Commission retains some attenuated concern that a noncontrolling limited partner with no managerial or operational role in a Commission licensee might benefit from the sale, addition or improvement of licenses held by that licensee, it cannot seriously believe that a freeze on processing of routine applications would further the public interest where the only licenses held by the licensee are private, noncommercial, not subject to competitive bidding and of little or no market value. There is no proper reason for freezing the processing of Falcon's applications involving private, noncommercial facilities. When such obviously unintended consequences are taken into account, it seems evident that the application processing freeze in Paragraph 18 is grossly overbroad.

The effects of the application processing freeze on Falcon, the services it provides and the public receiving such services in this case are particularly pronounced. The only links that Falcon has to the MobileMedia proceeding are the existence of Hellman & Friedman, a noncontrolling institutional investor limited partner in Falcon, and Mr. Bunce serving as only one of 11 positions on Falcon's Board of Representatives. However, neither

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<sup>9</sup>(...continued)

A Falcon entity also holds three licenses in the point-to-point common carrier microwave service which are used to transmit video signals to affiliated Falcon cable television systems. Thus, these stations do not currently derive any revenue from service to third parties. A list of Falcon licenses was submitted to the Commission on July 11, 1997 in response to the June 27 letter from Howard C. Davenport to Nathaniel F. Emmons, Esq.

Hellman & Friedman nor Mr. Bunce hold any managerial or operational role with Falcon and there has not even been any allegations that either Hellman & Friedman or Mr. Bunce participated in, condoned, or were even cognizant of the wrongdoing that was the focus of MobileMedia's voluntary October 15, 1996 report to the Commission. Moreover, the wrongdoing at issue in the MobileMedia proceeding certainly does not relate to any Falcon operation. The Commission must balance Falcon's attenuated connection to this case with the impact of freezing the processing of any Falcon applications for new authorizations, modifications of existing authorizations, renewal of existing authorizations and assignment or transfer of control (even *pro forma*) of existing authorizations, the vast bulk of which concern noncommercial radio facilities in the CARS or business radio service which are used exclusively for internal business purposes and are clearly ancillary to Falcon's cable television operations.

Falcon urges the Commission to modify or clarify Paragraph 18 as it pertains to Falcon. In this regard, Falcon concurs with Western that under its outstanding precedents, the Commission has ample grounds to lift the freeze in its entirety. Should the Commission decide not to lift the freeze, Falcon supports Western's suggestion that the Commission substitute the word "controlling" for "attributable" in paragraph 18.<sup>10</sup> In addition, Falcon suggests a partnership version of Western's proposal of a "bright line test" for corporate licensees.<sup>11</sup> A similar test for partnership licensees such as Falcon's licensed operating subsidiaries affected by the freeze is necessary. A demonstration that "attributable" interest

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<sup>10</sup>Petition at 24.

<sup>11</sup>Id. at 23-24.



holder(s) on the Bureau's June 25 List individually or collectively have only a noncontrolling limited partnership interest in the licensee, or noncontrolling representation on the licensee's Board of Representatives or equivalent, and have no role in the day-to-day management and operations of the licensee should warrant grant of that licensee's applications free of conditions. At a minimum, the Commission should immediately modify or clarify Paragraph 18 to limit the freeze on processing to those applications in which the attributable interest holder appearing on the Bureau's list has control or is involved in the licensee's day-to-day operations in the course of that person's employment.<sup>12</sup>

In lieu of or in conjunction with the foregoing suggestions, the Commission could simply leave the existing language of Paragraph 18 intact but create an exception that exempts from the processing freeze radio applications filed in the ordinary course of business or where such filing concerns radio authorizations that constitute a small part of a larger transaction in which the radio authorizations that are the subject of the applications are not the central asset. Given the nature of the licensed radio facilities used in Falcon's cable television business, Falcon would be amenable to an exception limited to applications that concern private radio (non-commercial) licenses. These licenses, which would include Falcon's CARS and business radio licenses, are limited to internal business uses, have little or no market value and are not subject to auction.

Falcon agrees with Western that not only are the procedures set in motion by Paragraph 18 grossly unfair to innocent third parties such as Falcon, they also harm both

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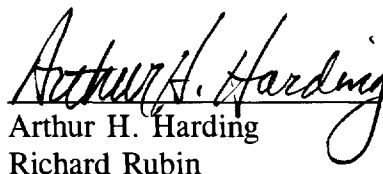
<sup>12</sup>See also Triad's Petition for Partial Reconsideration at 11-13, endorsing Western's suggestions for modification or clarification of Paragraph 18.

innocent parties with whom Falcon transacts business and the public. The unnecessary breadth of this processing freeze has an undue negative impact on Falcon's cable television operations which use and rely on CARS and business radio authorizations. The failure to have license renewal, new license, license modification or assignment/transfer (even *pro forma*) applications processed in a timely manner would have significant repercussions not only for Falcon's ability to provide cable television service generally and for the public that subscribes to it, but also with respect to Falcon's ability to meet the often particular requirements in its franchise agreements with local governmental authorities.

In sum, Falcon agrees with Western that the language of Paragraph 18 is unnecessarily and problematically overbroad and that a prompt revision or clarification along the lines discussed in Western's Petition and in these comments is necessary.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Eve Lehman, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Comments Of Falcon Holding Group, L.P. In support Of Emergency Petition For Limited Reconsideration Or Clarification" was served this 14th day of July, 1997, via first class mail, postage prepaid, upon the following:

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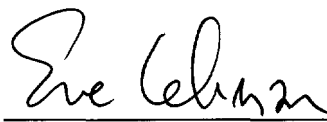
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